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dants. *2/23/2017* Clerk
Bar Clerk

Dep. Clerk

LAURENCE HARMELIN, ESQUIRE
Post Office Box 3574
Westchester, PA 19381

 ΔH

For the Defendant
Asya Richardson:

RONALD A. SMITH, ESQUIRE
RONALD A. SMITH AND ASSOCIATES
1617 JFK Boulevard
Suite 1240
Philadelphia, PA 19103

For the Defendant
Thais Thompson:

PAUL J. HETZNECKER, ESQUIRE
1420 Walnut Street
Suite 911
Philadelphia, PA 19102

For the Defendant
James Morris:

RONALD THOMPSON, ESQUIRE
3002 Lincoln Drive
Suite J
Marlton, NJ 08053

WAYNE POWELL, ESQUIRE
811 Church Road
101 Parragon Building
Cherry Hill, NJ 08002

Audio Operator:

MARK RAFFERTY

Transcribed by:

DIANA DOMAN TRANSCRIBING
P.O. Box 129
Gibbsboro, New Jersey 08026-0129
Office: (856) 435-7172
Fax: (856) 435-7124
E-mail: dianadoman@comcast.net

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I N D E X

JURY CHARGE:

PAGE NUMBER

By Judge Surrick

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1 (Call to Order of the Court)

2 (The following is the requested portion of the
3 Honorable R. Barclay Surrick's jury charge which took place at
4 11:59 a.m.)

5 THE COURT: Okay. Ladies and gentlemen, the next
6 order of business in this trial is the charge of the Court.
7 During the course of the charge I'm going to be discussing
8 with you a number of different legal principles.

9 I'm going to talk to you about the evidence in this
10 case. I'm going to talk to you about the credibility of
11 witnesses, how you should assess the credibility of witnesses.
12 I'm going to talk to you about the presumption of innocence
13 and the Government's burden of proof in this matter.

14 I am going to define for you each of the crimes that
15 has been -- that had been brought against each of the
16 defendants here.

17 Ladies and gentlemen, there are six defendants.
18 There are a number of different crimes that have been charged
19 here. And, under the circumstances, of necessity it is going
20 to take quite a while to go through the legal principles that
21 you are going to need to reach a fair decision in this matter.

22 During the course of the charge, as I go through
23 each crime, you will hear me repeat myself on occasion,
24 because some of the elements of each crime are similar. But
25 it is necessary for me to give you each crime and then to

1 define individually each crime. And, so in doing that, in
2 light of the number of people involved and in light of the
3 number of charges, we are going to be here quite a while just
4 listening to me give you the legal principles. I wish there
5 was another way to do it.

6 In many, many cases, where the trial takes two or
7 three days, the Court's charge will take 40 minutes, 50
8 minutes. In this instance the charge is going to be
9 significantly longer than that. And, as a matter of fact, we
10 will take a break in the middle of the charge because of that.

11 So I warn you in advance that that is what you're
12 going to face from here on. It is 12:00 now. You've been
13 sitting for a while. I am going to take a brief recess now to
14 give you a chance to relax. When I bring you back I will give
15 you the initial instructions. After an hour or so or an hour
16 and a half, I will then recess, let you have your lunch and
17 then we'll bring you back for the final instructions. And,
18 after I have given you all of the instructions, the case will
19 be put into your hands for your consideration.

20 When you go out now, don't discuss the case. We'll
21 bring you back in ten minutes.

22 (Recess at 12:02 p.m. to 12:15 p.m.)

23 THE COURT: Okay. Have a seat, ladies and
24 gentlemen. Ladies and gentlemen, one thing I want to indicate
25 to you before I get started, I have had my staff type up a

1 copy of the charge that I am going to be giving to you. And,
2 I will send a copy of the charge out with you when you go out
3 to deliberate. And, I tell you that so that you won't all be
4 feverishly trying to write down whatever I say. You will have
5 a copy of the charge in the jury room with you.

6 Okay. Ladies and gentlemen, you have seen and heard
7 all of the evidence in this case. You have heard the
8 arguments of counsel and it's now my job to give you the
9 instructions with regard to the law in this matter.

10 CLERK: Your Honor, can you pull the mike closer or
11 sit up in the chair? (Laughter) Why don't you come right up
12 here? Okay.

13 Ladies and gentlemen, you have two duties as jurors
14 in this matter. Your first duty is to decide what the facts
15 are in this case based upon the evidence that was presented in
16 this courtroom.

17 Ladies and gentlemen, that's your job and your job
18 alone. You are the sole determiners of the facts in this
19 matter. I don't play any part in determining what the facts
20 are in this case. And, ladies and gentlemen, you should not
21 take anything I have said during the course of this trial as
22 indicating in any way how I feel you should decide this
23 matter. It is your job to make the decision in this case, not
24 mine.

25 As the Judge, it's my job to see that the rules are

1 followed and that the parties in this litigation get a fair
2 hearing. So ladies and gentlemen your function, first
3 function, is to determine what the facts are.

4 Your second duty, ladies and gentlemen, is to apply
5 the law as I give it to you. I am going to explain over the
6 next long period of time the principles of law that you're
7 going to need in reaching a decision in this case.

8 Ladies and gentlemen, you have to apply my
9 instructions on the law and you have to apply those
10 instructions carefully. Each of the instructions that I give
11 you is important and you must apply all of the instructions.

12 Ladies and gentlemen, you must not substitute or
13 follow your own notion as to what the law is or should be in
14 making a decision in this matter. Whether or not you agree
15 with the law as I give it to you, it's your duty and
16 obligation to apply the law as I give it to you.

17 Now, ladies and gentlemen, your verdict in this case
18 must be unanimous, that means that all of you have to agree on
19 the verdict or there will be no verdict. In the jury room
20 you'll discuss this case together, but ultimately each of you
21 has to decide this case for yourselves. Each of you has to
22 make up your own mind in this matter.

23 Ladies and gentlemen, this is the responsibility of
24 each of you and it is a responsibility that cannot be avoided.

25 Ladies and gentlemen, you have to perform your duty

1 fairly and impartially. Do not allow sympathy, prejudice,
2 fear, public opinion, or anything else, to influence you in
3 making a decision in this matter. You should not be
4 influenced by a person's race, or color, or religion, or
5 gender, or profession, or occupation, or celebrity.

6 Ladies and gentlemen, decide this case based upon
7 the evidence and testimony presented here over the last five
8 plus weeks. And, if you do that, you will live up to your
9 oath as jurors, ladies and gentlemen.

10 Now, I've just said to you, you have to decide the
11 case based upon the evidence presented in this courtroom.
12 What is the evidence in this matter? The evidence is the
13 testimony of witnesses. You saw the witnesses come in here,
14 they got on the witness stand, they were sworn and they
15 testified in front of you. Documents and other exhibits were
16 received into evidence in this case. And, you will remember
17 there were a number of different documents offered for your
18 consideration. Those documents, those exhibits, are evidence
19 in this case.

20 Ladies and gentlemen, any facts that were stipulated
21 to or formally agreed to by the parties are evidence in this
22 case. What is not evidence? Ladies and gentlemen, the
23 indictment in this matter is not evidence in this case. The
24 statements and arguments of lawyers are not evidence in this
25 case, and I've told you that several times. And, there were a

1 lot of statements and a lot of arguments in this matter, but
2 the statements and arguments of counsel are not evidence.

3 Questions by lawyers are not evidence in this case.
4 It's the answers to the questions that are the evidence in
5 this matter. Objections by lawyers are not evidence in this
6 case. Any testimony that I told you to disregard is not
7 evidence in this case. And, as I've told you a number of
8 times, anything that you have seen or heard outside of this
9 courtroom is not evidence in this case.

10 Ladies and gentlemen, you should use your common
11 sense in weighing the evidence in this matter. Consider the
12 evidence in light of your everyday life experience and give it
13 whatever weight that you believe it deserves. If your
14 experience and common sense tell you that certain evidence
15 reasonably leads to a conclusion, you may reach that
16 conclusion.

17 Ladies and gentlemen, I told you in the preliminary
18 instructions that the rules of evidence control what would be
19 received during the course of the trial. During the trial,
20 the attorneys from time to time objected when they thought
21 evidence was being offered that was not permitted by the rules
22 of evidence. These objections simply meant that the lawyers
23 were asking me to decide whether the evidence should be
24 allowed under the rules. These attorneys have an obligation
25 to make objections on behalf of their clients, and it is my

1 job to rule on those objections when those objections are
2 made. There is nothing improper about making an objection if
3 you feel that the evidence is inappropriate.

4 So ladies and gentlemen, you shouldn't be influenced
5 by the fact that an objection was made. And, you should not
6 be influenced by my ruling on the objection. And, you should
7 not be influenced by any sidebar conferences that you may have
8 heard during the course of this trial. When I overruled an
9 objection, the question was answered or the exhibit was
10 received into evidence, and you should treat that testimony or
11 that exhibit like any other testimony and exhibit that you saw
12 during the course of the trial.

13 When I allowed evidence to be admitted for a limited
14 purpose, I instructed you to consider that evidence only for
15 that limited purpose. And, ladies and gentlemen, you must
16 follow that instruction.

17 When I sustained an objection during the course of
18 the trial, the question was not answered or the exhibit was
19 not received into evidence. You must regard -- disregard the
20 question or the exhibit entirely if I sustained an objection.
21 Do not think about -- do not guess about what the witness
22 might have said or answered to the question. Do not think or
23 guess what exhibit -- what that exhibit might have shown.

24 Sometimes during the course of the trial, when there
25 was an objection, the witness answered the question before I

1 even had a chance to rule on the objection. If that happened
2 and I sustained the objection, then you should disregard the
3 answer that you heard.

4 Ladies and gentlemen, during the course of the
5 trial, if I ordered that some testimony or some evidence
6 should be stricken or removed from the record, you must
7 disregard that evidence.

8 Ladies and gentlemen, during -- although the
9 attorneys in this case may have called your attention to
10 certain facts or factual conclusions that they thought were
11 important, what the lawyers said is not evidence and is not
12 binding on you.

13 Ladies and gentlemen, it's your recollection and
14 your interpretation of the evidence that counts. Whatever the
15 attorneys may have said to you with regard to the evidence or
16 testimony, it is your recollection of the testimony that
17 counts.

18 Now, you heard two types of evidence in this case.
19 You heard direct evidence, you heard circumstantial evidence.

20 Direct evidence is simply evidence that is offered
21 directly on a point. When a witness comes in and testifies as
22 to something that witness knows from their own personal
23 senses, something that the witness has seen or heard or
24 smelled, that is direct evidence on a point.

25 Circumstantial evidence is evidence which, if

1 believed, indirectly proves a fact. It is evidence that
2 proves one or more facts from which you may reasonably infer
3 the existence of some other fact or facts. A reasonable
4 inference is simply a deduction or a conclusion that reason,
5 experience, common sense, leads you to make from the evidence.

6 Ladies and gentlemen, a reasonable inference is not
7 a suspicion or a guess, it is a reasoned logical decision to
8 find that a disputed fact exists based upon another fact.

9 Let me give you an example of direct evidence,
10 circumstantial evidence. If somebody came into this
11 courtroom, got up on the witness stand and was sworn and
12 testified, I just came in from outside and it was snowing,
13 that's direct evidence on a point.

14 Circumstantial evidence would be if you're sitting
15 here and the door opens all of a sudden and somebody walks in
16 and they have a raincoat on and it's covered with -- it's wet
17 or covered with snow; they have a hat on, that's covered with
18 snow, you could look at that, you could observe the facts that
19 you see and you could draw reasonable inferences from those
20 facts. What's the reasonable inference? Well, it must be
21 snowing outside. So that's what circumstantial evidence is
22 all about, the drawing of reasonable inferences from the facts
23 that you accept as true.

24 Ladies and gentlemen, you should consider all of the
25 evidence in this matter in making your decision, both the

1 direct and the circumstantial evidence. The law doesn't make
2 any distinction between the weight that you should give to
3 either direct or circumstantial evidence. It's for you to
4 decide how much weight you are going to give to the direct
5 evidence and to the circumstantial evidence in this matter.

6 Now, I told you a few minutes ago that you have to
7 decide what the true facts are in this case. How do you
8 decide what the facts are in a matter like this? Ladies and
9 gentlemen, in determining what the facts are, you have to
10 decide what testimony you believe and what testimony you do
11 not believe. You are the sole judges of the credibility of
12 the witnesses who appeared in this courtroom. Credibility
13 refers to whether a witness is worthy of belief.

14 Was the witness truthful? Was the testimony of that
15 witness accurate? You may believe everything that a witness
16 said, some of what the witness said or none of what the
17 witness said. Ladies and gentlemen, that is entirely up to
18 you. You are made the sole and exclusive judges of the
19 credibility of the witnesses who appeared in this trial.

20 In deciding credibility, ladies and gentlemen, you
21 may decide to believe a witness based upon that witness's
22 behavior or their manner of testifying, or based upon the
23 explanation the witness gave and all of the other evidence in
24 this case. Ladies and gentlemen, you, everyday of your lives,
25 go through a credibility assessment process. You meet people,

1 you talk to them and you decide almost unconsciously where the
2 credibility is. Can I believe that individual?

3 The process isn't any different for the witnesses
4 who appeared in this trial. They came up here, they were
5 sworn to tell the truth. They testified in front of you. You
6 saw what they had to say, you heard the way they said it. You
7 heard it in the whole context of this case. Based upon that,
8 you have to decide the credibility of that witness.

9 Now, in deciding whether to believe a witness's
10 testimony, you should take into consideration certain things.
11 You should consider the opportunity and the ability of the
12 witness to see or hear or know the things that that witness
13 has testified to. You should consider the quality of the
14 witness's knowledge and understanding and the quality of the
15 witness's memory. You should consider the witness's
16 appearance, behavior and manner while testimony -- while
17 testifying. What was the demeanor of the witness on the
18 witness stand?

19 You should consider the witness has an interest in
20 the outcome of this case or any modus -- motive or bias or
21 prejudice in this matter. You may consider any relation that
22 the witness may have to other parties in this case and any
23 effect that they verdict may have on that particular witness.
24 You should consider whether the witness said or wrote anything
25 before the trial that was inconsistent with the testimony

1 given here in this courtroom.

2 You should consider whether the testimony of the
3 witness is consistent or inconsistent with other evidence that
4 you heard during the course of the trial. And, you should
5 consider any other factors that you believe are important in
6 determining whether or not you should believe a witness's
7 testimony.

8 Now, ladies and gentlemen, inconsistencies in the
9 testimony of a witness or witnesses is not uncommon.
10 Sometimes witnesses forget, sometimes they remember
11 incorrectly. If the different parts of any testimony of a
12 witness or witnesses appear to be inconsistent, then you, the
13 jury, should reconcile these conflicting statements, whether
14 of the same witness or different witnesses, if it can be done
15 fairly and satisfactorily.

16 If, however, you decide that there is a genuine and
17 an irreconcilable conflict in the testimony, then it is your
18 function and it's your duty to determine which, if any, of the
19 contradictory statements you're going to believe.

20 Ladies and gentlemen, after you make your judgment
21 about the believability of a witness, you can then attach to
22 that witness's testimony the importance or the weight that you
23 believe that testimony deserves. The weight of the evidence
24 to prove a fact does not necessarily depend upon the number of
25 witnesses who testified or the quantity of evidence that was

1 presented. What is important, ladies and gentlemen, is --
2 what is more important than numbers and quantity is how
3 believable the witnesses were and how much weight you think
4 their testimony deserves.

5 Ladies and gentlemen, I would suggest to you that
6 after you consider the testimony that you heard, consider the
7 testimony that you saw. And after you make your determination
8 as to where you think the credibility lies in this situation,
9 you will have made a giant step towards determining what the
10 true facts are in this case.

11 Now, you heard testimony from law enforcement
12 officers. The fact that a witness is employed as a law
13 enforcement officer does not mean that his or her testimony
14 necessarily deserves more or less consideration or greater or
15 lesser weight than any other witness. You have to decide,
16 ladies and gentlemen, after reviewing all of the evidence in
17 this matter, whether you believe the testimony of a law
18 enforcement witness and how much weight that testimony
19 deserves.

20 Now, you did hear testimony from Charlton Custis,
21 Desmond Faison. Both of those individuals are alleged co-
22 conspirators in Count 1 of this indictment. Both of those
23 witnesses indicated that they had participated in the crimes
24 charged, and both of those witnesses indicated that they had
25 reached plea agreements with the Government.

1 You also heard testimony from Kristina Latney, who
2 is a -- an alleged co-conspirator in Count -- I think it was
3 Count 77 of the indictment. That count charged money
4 laundering. And, Ms. Latney says that she participated in the
5 crimes charged, and made a plea agreement with the Government,
6 and then came in and testified before you.

7 Ladies and gentlemen, the testimony of Charlton
8 Custis, Desmond Faison and Kristina Latney was received in
9 evidence and may be considered by you. The Government, you
10 should understand, is permitted to present testimony from
11 someone who has reached a plea bargain with the Government in
12 exchange for testimony. But you should consider the testimony
13 of Ms. Latney, and Mr. Custis, and Mr. Faison, with great care
14 and caution. In evaluating their testimony, you should
15 consider this fact along with all of the others that I have
16 just discussed with you with regard to assessing the testimony
17 of a witness.

18 Whether or not the testimony of Mr. Custis, or Mr.
19 Faison, or Ms. Latney, may have been influenced by plea
20 agreement or their alleged involvement in the crimes is for
21 you to determine. You have to make that determination. You,
22 ladies and gentlemen, may give the testimony of Mr. Faison,
23 Mr. Custis, and Ms. Latney, whatever weight that you believe
24 that testimony deserves. But you should understand that there
25 is nothing improper about the Government presenting such a

1 witness to you. You simply have to evaluate the credibility
2 of that witness.

3 I would indicate to you, with regard to those three
4 witnesses, you should not consider the pleas of guilty of
5 those three individuals as evidence of any other defendant's
6 guilty. Such evidence is offered to you only to allow you to
7 assess the credibility of the witness and to eliminate any
8 concern that other defendants may have been singled out for
9 prosecution and to explain how the witness came to possess a
10 detailed first-hand knowledge about the events that that
11 witness testified to. You may consider Ms. Latney's, Mr.
12 Custis's and Mr. Faison's guilty pleas only for that purpose.

13 Now, ladies and gentlemen, in a criminal case a
14 defendant has a constitutional right not to testify. However,
15 if a defendant chooses to testify, he or she is, of course,
16 permitted to take the witness stand on their own behalf. In
17 this case you heard several witnesses -- several defendants
18 testify. You should examine their testimony just as you would
19 the testimony of any other witness who testified during the
20 course of this trial.

21 Now, ladies and gentlemen, although the Government
22 is required to prove the defendant's guilt beyond a reasonable
23 doubt, the Government is not required to present all possible
24 evidence related to the case or to produce all possible
25 witnesses who might have some knowledge about the facts of the

1 case. In addition, as I've explained to you, the defendants
2 are not required to present any evidence or produce any
3 witnesses.

4 In this case several defendants presented evidence
5 and produced witnesses. These defendants are not required to
6 present all possible evidence related to the case or to
7 produce all possible witnesses who may have some knowledge of
8 the facts of this matter. Ladies and gentlemen, take the case
9 as it was presented. Consider the witnesses presented by the
10 Government and consider the witness as you heard from the
11 defense.

12 Ladies and gentlemen, the Rules of Evidence usually
13 do not permit witnesses to give you opinions during the course
14 of their testimony. Witnesses are permitted to come in and
15 testify as to things that they've seen or heard sometimes, but
16 usually witnesses are not permitted to give opinions to you.
17 In this case you heard several witnesses who did give you
18 their opinions. People who have an expertise in a particular
19 science or profession are permitted to come into court and
20 give us their opinions, give us the benefit of their
21 expertise. Because of their special skill, because of their
22 special knowledge, training, education in their particular
23 field, these witnesses are allowed to come in and give their
24 opinions.

25 Now, in this case, you heard the opinions of Det.

1 Christopher Morano of the Philadelphia Police Department. He
2 testified as an expert in narcotics trafficking and narcotics
3 investigation. You heard the opinions of Special Agent
4 Armstrong, of the Internal Revenue Service, who came in and
5 testified as an expert on money laundering. You heard the
6 opinion of the firearm's examiner, Mr. Curtis, Michael Curtis,
7 of the ATF, who came in and gave you his opinion after
8 examining a firearm. And, you heard the opinion of Dr. Robert
9 Rodman, who testified as an expert in linguistic and the
10 derivation of words.

11 Ladies and gentlemen, the opinions of these
12 witnesses should receive whatever weight you think is
13 appropriate given the evidence in this case. In weighing the
14 opinion testimony of these witnesses, you may consider the
15 witness's qualifications, the reason for the witness's
16 opinion, the reliability of the information supporting the
17 witness's opinion as well as other factors that I have
18 discussed during the course of the charge with regard to
19 assessing the credibility of witnesses.

20 Ladies and gentlemen, you can disregard an expert's
21 opinion entirely if you decide that the expert opinion is not
22 based upon sufficient knowledge or skill or experience or
23 training or education. You may also disregard the opinion if
24 you conclude that the reasons given in support of the opinion
25 are not sound, or if you conclude that the opinion is not

1 supported by the facts shown by the evidence. Or, if you
2 think that the opinion is outweighed by other evidence.

3 In other words, ladies and gentlemen, it is your job
4 to determine the weight that you will be -- you will give to
5 an expert's opinion just as with any other witness who
6 testified during the course of this trial.

7 Now, you have heard that the parties here have
8 submitted certain stipulations to you and those stipulations
9 will go out with you when you go out to deliberate. The
10 parties have agreed that certain witnesses, if called to
11 testify, would testify as to certain things. You should
12 consider that testimony in the same way as if that witness had
13 appeared in court and testified before you.

14 The parties have also agreed that certain stipulated
15 facts are true. You should, therefore, treat these facts as
16 having been proven. However, you are not required to do that
17 because you are the sole judges of the facts.

18 During the course of the trial I took judicial
19 notice of at least one fact, and that was that July 2nd, 2005
20 was a Saturday. I believe that that fact can accurately and
21 readily be determined. You may accept that fact as proven.
22 However, again, ladies and gentlemen, as with any other fact
23 in this matter, it is entirely up to you to determine the
24 facts of this case.

25 Now, during the trial you heard audio recordings of

1 conversations. The audio recording -- there was audio
2 recordings of conversations with the defendant, Thais
3 Thompson, that were made without her knowledge. The recording
4 of these conversations was lawful and the recordings were
5 available for use by either party.

6 During the trial you also heard recordings of
7 conversations with defendants that were made without their
8 knowledge but with the consent of authorization of the Court.
9 These were the wiretap recordings that you heard. Those
10 wiretaps were lawfully obtained. The use of this procedure to
11 gather evidence is lawful. And, the recordings may be used by
12 either party in the litigation.

13 Now, you were -- you heard those audio recordings
14 but you also were given written transcripts of those audio
15 recorded conversations. You should understand, ladies and
16 gentlemen, that the transcripts are not evidence. They were
17 given to you only as a guide to help you follow what was being
18 said. The recordings themselves are the evidence. If you
19 noticed any difference between what you heard on the
20 recordings and what you read in the transcripts, ladies and
21 gentlemen, you must rely on what you heard, not what you read.

22 And, if you could not hear during the course of
23 listening to those recordings or you could not understand
24 certain parts of the recordings, you must ignore the
25 transcript as far as those parts are concerned.

1 Ladies and gentlemen, the transcripts name the
2 speakers, but, again, you should remember that it is for you
3 to decide what you heard and it's for you to decide who you
4 heard speaking on the recordings. The names on the
5 transcripts were for your convenience.

6 Finally, ladies and gentlemen, there were certain
7 charts and summaries offered to you during the course of the
8 trial. You may use those charts and those summaries as
9 evidence in this matter. You have to decide how much weight,
10 if any, you will give to these charts and these summaries. In
11 making that decision you should consider the testimony you
12 heard about the way in which the charts and the summaries were
13 prepared.

14 During the course of the trial, you heard some
15 testimony that Mr. Coles had previously been convicted of a
16 crime. You may consider that evidence of a prior conviction
17 to decide whether or not to believe Mr. Coles' testimony or
18 how much weight to give Mr. Coles' testimony. Evidence of a
19 prior conviction, as it was presented to you, is used -- can
20 be used by you in determining the credibility of the witness.

21 You should understand, however, ladies and
22 gentlemen, that that evidence does not mean that the
23 defendant, Mr. Coles, committed the crimes charged here. That
24 evidence may be used by you to determine the credibility of
25 the testimony. And, in addition, that evidence may not be

1 used in any way at all in connection with the other
2 defendants.

3 Now, I've discussed with you the credibility issues,
4 your job as jurors. Let me talk to you now about the
5 Government's burden of proofs, the presumption of innocence in
6 this matter. And, then we will get into the crimes, the
7 individual crimes that are charged here and the element of
8 each of those crimes.

9 Ladies and gentlemen, you should understand that it
10 is a fundamental principle of our system of criminal justice
11 that a defendant is presumed to be innocent. Defendants,
12 Alton Coles, Timothy Baukman, James Morris, Monique Pullins,
13 Asya Richardson and Thais Thompson have pled not guilty to the
14 offenses charged here. Ladies and gentlemen, you should
15 understand that they are presumed to be innocent. They
16 started this trial with a clean slate, with no evidence
17 against them.

18 You should understand, ladies and gentlemen, that
19 that presumption of innocence stays with them unless or until
20 the Government has presented evidence that overcomes that
21 presumption by convincing you that they defendants are guilty
22 of the crimes charged beyond a reasonable doubt.

23 Ladies and gentlemen, the presumption of innocence
24 requires that you find the defendants not guilty -- (phone
25 rings) --

1 SPEAKER: Apologize.

2 THE COURT: -- unless you're satisfied that the
3 Government has proven guilt beyond a reasonable doubt. (Phone
4 rings) Happens all the time.

5 Ladies and gentlemen, the presumption of innocence
6 means that the defendants have no burden or obligation to
7 present any evidence or to prove that they are not guilty.
8 The burden or obligation of proof in this matter is on the
9 Government to prove the defendants guilty, and this burden
10 stays with the Government throughout the trial.

11 In order for you to find the defendant guilty of the
12 offense charged, the Government must convince you that the
13 defendants are guilty beyond a reasonable doubt. That means
14 that the Government must prove each and every element of the
15 offense charged beyond a reasonable doubt. A defendant may
16 not be convicted based upon suspicion or conjecture but only
17 on evidence proving guilt beyond a reasonable doubt.

18 Now, ladies and gentlemen, proof beyond a reasonable
19 doubt does not mean proof beyond all possible doubt or to a
20 mathematical certainty. Possible doubt or doubt based upon
21 conjecture, speculation or hunch are not reasonable doubts. A
22 reasonable doubt is a fair doubt based upon reason, logic,
23 common sense or experience. It's a doubt that an ordinary
24 reasonable person would have after carefully weighing all of
25 the evidence. And, it is a doubt of the sort that would cause

1 a reasonably careful person to hesitate in acting in a matter
2 of importance where their own affairs are concerned. It may
3 arise out of the evidence presented or out of the lack of
4 evidence presented or from the nature of the evidence
5 presented.

6 If, having heard all of the evidence, you're
7 convinced that the Government proved each and every element of
8 the offense charged beyond a reasonable doubt, you should
9 return a verdict of guilty on that offense. However, if you
10 have a reasonable doubt about one or more of the elements of
11 the offense charged, then you must return a verdict of not
12 guilty on that offense.

13 Let's talk about the indictment in this matter. As
14 you all know the defendants are charged in the indictment with
15 violations of Federal law. As I explained at the beginning of
16 the trial, the indictment is just a formal way of specifying
17 the exact crimes that the defendants are accused of
18 committing.

19 Ladies and gentlemen, an indictment is simply a
20 description of the charges against the defendant. It is an
21 accusation only. An indictment is not evidence of anything
22 and you should not give any weight to the fact that the
23 defendants have been indicted in making your decision.

24 Now, the defendants here are charged in multiple
25 counts in this indictment. Each count charges one or more

1 defendants with the commission of a separate crime. And,
2 ladies and gentlemen, I'm going to send a copy of the
3 indictment out with you when you go out to deliberate, and
4 that should aid you in your deliberations.

5 You should understand that the indictment defines
6 the scope of the trial and it serves to notify the defendants
7 of the charges that they're facing. Your job as jurors is to
8 determine whether or not the Government has proven them guilty
9 of the crimes with which they are charged in the indictment.
10 In order to perform that that function, you must understand
11 clearly what crimes are charged and who is charged with what
12 crimes.

13 I'm going to now summarize for you the charges that
14 have been brought against each of these defendants. And, I
15 will go through each defendant, the crimes that apply to each
16 defendant one at a time.

17 Defendant Alton Coles has been charged with the
18 following crimes in one or more counts of this indictment:

19 He's been charged with conspiracy to distribute five
20 kilograms or more of cocaine and 50 grams or more of cocaine
21 base, which is crack cocaine. He's been charged with engaging
22 in a continuing criminal enterprise. He's been charged with
23 distribution of a controlled substance. He's been charged
24 with possession with the intent to distribute a controlled
25 substance. He's been charged with knowingly or intentionally

1 using a communications facility to facilitate a drug
2 trafficking crime.

3 He's been charged with managing and controlling, and
4 aiding and abetting the management and control of a storage
5 facility for the purpose of unlawfully storing or distributing
6 a controlled substance. He's been charged with knowingly
7 possessing and aiding and abetting the possession of a firearm
8 in furtherance of a drug trafficking crime. He's been charged
9 with being a convicted felon in possession of a firearm. He's
10 been charged with money laundering to conceal the nature,
11 location, source, ownership and control of funds. He's been
12 charged with conspiracy to launder money. He's been charged
13 with structuring a currency transaction for the purpose of
14 evading IRS reporting requirements on cash transactions
15 exceeding \$10,000.

16 And, finally, he's been -- no. He's been charged
17 with committing wire fraud and aiding and abetting the
18 commission of wire fraud on a financial transac -- financial
19 institution. And, finally, he's been charged with investing
20 drug proceeds in an enterprise in interstate commerce.

21 Those are the charges in the various counts that the
22 indictment makes against Mr. Coles.

23 Defendant Timothy Baukman has been charged with the
24 following crimes in one or more counts of the indictment:

25 He's been charged with conspiracy to distribute five

1 kilograms or more of cocaine and 50 grams or more of crack
2 cocaine. He's been charged with engaging in a continuing
3 criminal enterprise. He's been charged with managing and
4 controlling, and aiding and abetting the management and
5 control of a storage facility for the purpose of unlawfully
6 storing and distributing controlled substance.

7 Charged with possession with intent to distribute a
8 controlled substance. He's charged with knowingly possessing
9 and aiding and abetting the possession of a firearm in
10 furtherance of a drug trafficking crime. He's been charged
11 with possession of an unregistered firearm, to wit: a machine
12 gun. He's been charged with money laundering to promote drug
13 trafficking. He's been charged with money laundering to
14 conceal the nature, source, ownership and control of funds.

15 Those are the charges against Mr. Baukman.

16 And, I'm going through these, ladies and gentlemen,
17 each defendant and the individual charges that have been made
18 against the defendant because you have to assess whether the
19 Government has met its burden of proof on each crime
20 separately. And, I'll tell you that again later, but that's
21 why I'm going through so painstakingly each crime that the
22 defendants are charged with committing.

23 Defendant James Morris has been charged with the
24 following crimes in one or more counts:

25 Conspiracy to distribute five kilograms or more of

1 cocaine and 50 grams or more of cocaine base, or crack
2 cocaine. Knowingly or intentionally using a communication
3 facility to facilitate drug trafficking. And, knowingly
4 possessing, and aiding and abetting the possession of a
5 firearm in furtherance of a drug trafficking crime.

6 Those are the charges against Mr. Morris.

7 The defendant Monique Pullins has been charged with
8 the following crime, or crimes, in one or more counts:

9 Ms. Pullins is charged with a conspiracy to
10 distribute five kilograms or more of cocaine and 50 grams or
11 more of crack cocaine. She's charged with knowingly or
12 intentionally using a communication facility to facilitate a
13 drug trafficking crime. She's charged with managing and
14 controlling, and aiding and abetting the management and
15 control of a storage facility for the purpose of unlawfully
16 storing and distributing controlled substances. She's charged
17 with knowingly possessing and aiding and abetting the
18 possession of a firearm in furtherance of a drug trafficking
19 crime.

20 Those are the charges against Ms. Pullins.

21 Defendant Asya Richardson is charged with the
22 following crimes in one or more counts:

23 She is charged with money laundering to conceal the
24 nature, location, source, ownership and control of funds,
25 conspiracy to commit money laundering, and she's charged with

1 committing wire fraud and aiding and abetting the commission
2 of wire fraud on a financial institution.

3 Those are the charges against Ms. Richardson.

4 And, finally, Ms. Thompson is charged with the
5 following crimes in one or more counts of this indictment:

6 She's charged with knowingly possessing, and aiding
7 and abetting the possession of a firearm in furtherance of a
8 drug trafficking crime. She's charged with making materially
9 false statements under oath. She's charged with being an
10 accessory after the fact to a conspiracy to distribute five
11 kilograms or more of cocaine or 50 grams or more of crack
12 cocaine by making false statements of fact as alleged in the
13 other counts.

14 Those are the charges that are being brought against
15 each of these defendants. I'm going to give you the
16 definition of each of those crimes, explain the elements of
17 each of those crimes to you in just a few minutes.

18 Ladies and gentlemen, you'll note when you take a
19 look at the indictment that it charges that certain offenses
20 were committed on or about certain dates. You should
21 understand that the Government does not have to prove with
22 certainty the exact date of each alleged offense. It's
23 sufficient that the Government proves beyond a reasonable
24 doubt that an offense was committed on a date reasonably near
25 the date alleged.

1 Now, ladies and gentlemen, as I said a minute ago,
2 each of the defendants is charged with several offenses. Each
3 offense is charged in a separate count in the indictment.
4 There are instances where several defendants are charged in
5 the same count. You should understand, ladies and gentlemen,
6 that the number of offenses charged is not evidence of guilt.
7 This should not influence your decision in any way.

8 In addition, in our system of justice, ladies and
9 gentlemen, guilt or innocence is personal and individual. You
10 must separately consider the evidence that relates to each
11 offense and to each defendant and you must return a separate
12 verdict for each offense and each defendant. For each offense
13 charged, ladies and gentlemen, you must decide whether the
14 Government had proven beyond a reasonable doubt that the
15 defendant is guilty of that particular offense.

16 And, ladies and gentlemen, your decision on one
17 offense, whether guilty or not guilty, should not influence
18 your decision on any other offenses charged. Each offense
19 should be considered by you separately. And, that's why I
20 just went over each offense separately with you.

21 Now, I don't know where Mr. Finney is, but I believe
22 your lunch was on its way. If Mr. Finney hears me, he should
23 let me know whether it's here. (Pause) Lunch is here?

24 MR. FINNEY: Yes, sir.

25 THE COURT: Okay. Ladies and gentlemen, I'm about

1 to go into defining for you each crime that is charged here,
2 but we'll let you have your lunch first. And, we'll bring you
3 back and we will give you the rest of the Court's
4 instructions.. Okay? We'll recess for -- the attorneys are
5 pleading for an hour. We'll recess for an hour. The jurors
6 are pleading for an hour also.

7 (Lunch recess 1:16 p.m. to 2:22 p.m.)

8 THE COURT: Okay. Have a seat, ladies and
9 gentlemen.

10 As I told you before the luncheon break we're going
11 to get into the crimes that were alleged in this indictment
12 and the elements of those crimes.

13 Ladies and gentlemen, we -- I'm sure you're not
14 going to want to hear this, but we are probably about a third
15 of the way through this charge. What we will do is go on for
16 another hour or so and then we'll take a break and then we'll
17 come back and finish up with the final instructions.

18 Okay. Count 1 of the indictment, that count charges
19 that from on or about January of 1998 through on or about
20 December 10, 2005 defendants, Alton Coles, Timothy Baukman,
21 James Morris and Monique Pullins agreed or conspired together,
22 and with other persons, to distribute cocaine and cocaine
23 base, crack cocaine, which are controlled substances under
24 Federal law. The statute says that it's a Federal crime for
25 two or more people to agree or conspire to commit any offense

1 against the United States, even if they never actually achieve
2 their objective.

3 Ladies and gentlemen, a conspiracy is a kind of
4 criminal partnership, if you will. In order for you to find
5 the defendant -- a defendant guilty of conspiracy to
6 distribute controlled substances you must find, ladies and
7 gentlemen, that the Government has established beyond a
8 reasonable doubt the following three elements:

9 First, that two or more persons agreed to distribute
10 a controlled substance.

11 Second, that the defendant was a party to, or a
12 member of, that agreement.

13 And third, that the defendant joined the agreement
14 or conspiracy knowing of its objective to distribute a
15 controlled substance and intending to join together with at
16 least one other alleged conspirator to achieve that objective.
17 That is, ladies and gentlemen, that the defendant and at least
18 one other alleged co-conspirator shared a unity of purpose and
19 the intent to achieve that objective.

20 So, ladies and gentlemen, the first element of the
21 crime is the existence of an agreement. The Government must
22 prove beyond a reasonable doubt that two or more persons
23 knowingly and intentionally arrived at a mutual understanding
24 or agreement, either spoken or unspoken, to work together to
25 achieve the overall objective of a conspiracy to commit the

1 offense of distributing controlled substances.

2 Ladies and gentlemen, the Government doesn't have to
3 prove the existence of a formal or written agreement. They
4 don't have to prove an express oral -- oral agreement spelling
5 out the details of the understanding. The Government also
6 does not have to prove that all of the members of the
7 conspiracy directly met or discussed between themselves their
8 unlawful objective or agreed to all of the details or agreed
9 to what means they were going to use to accomplish the
10 objective. The Government is not even required to prove that
11 all of the people named in the indictment were in fact parties
12 to the agreement or that all of the members of the alleged
13 conspiracy are even known.

14 What the Government must prove beyond a reasonable
15 doubt is that two or more persons in some way or manner
16 arrived at some type of an agreement or a mutual understanding
17 or a meeting of the minds to try to accomplish the common
18 unlawful purpose.

19 And, ladies and gentlemen, you can consider both
20 direct evidence and circumstantial evidence in deciding
21 whether the Government has proven beyond a reasonable doubt
22 that an agreement or mutual understanding existed.

23 You may find the existence of a conspiracy based
24 upon evidence of related facts and circumstances which prove
25 that the activities of the participants in the criminal

1 venture could not have been -- the participants in a criminal
2 venture could not have been carried out, except as a result of
3 a preconceived agreement, scheme or understanding.

4 If you find that a criminal agreement or conspiracy
5 existed, ladies and gentlemen, then in order to find the
6 defendant guilty of conspiracy you must also find that the
7 Government proved beyond a reasonable doubt that the defendant
8 knowingly or intentionally joined that agreement or conspiracy
9 and voluntarily joined it during its existence intending to
10 achieve the common goal or objective and to work together with
11 other alleged conspirators towards that goal or objective.

12 Ladies and gentlemen, the Government need not prove
13 that the defendant knew everything about the conspiracy or
14 that he or she knew everyone involved in it or that he or she
15 was a member from the very beginning. The Government also
16 does not have to prove that the defendant played a major or
17 substantial role in the conspiracy.

18 You may consider both direct and circumstantial
19 evidence in deciding whether the defendant joined the
20 conspiracy or knew of its criminal objective and intended to
21 further the objective.

22 Evidence which shows that the defendant only knew
23 about the conspiracy or only kept bad company by associating
24 with members of the conspiracy or was only present when it was
25 discussed or when a crime was committed is not sufficient to

1 prove that the defendant was a member of the conspiracy, even
2 if the defendant approved of what was happening and did not
3 object to it.

4 Likewise, ladies and gentlemen, evidence showing
5 that the defendant may have done something that happened to
6 help the conspiracy does not necessarily prove that the
7 defendant joined the conspiracy. You may, however, consider
8 this evidence with all of the other evidence in deciding
9 whether the Government has proven beyond a reasonable doubt
10 that the defendant joined the conspiracy.

11 Now, in order to find the defendant guilty of
12 conspiracy you must find that the Government proved beyond a
13 reasonable doubt that the defendant joined the conspiracy
14 knowing its objective and intending to help further that
15 objective. That is the Government must prove that the
16 defendant knew the objective or goal of the conspiracy, that
17 the defendant joined the conspiracy intending to help further
18 or achieve that goal or objective and that the defendant, and
19 at least one other alleged conspirator, shared a unity of
20 purpose towards that objective or goal.

21 Again, you may consider both direct and
22 circumstantial evidence, including the defendant's words or
23 conduct and other facts and circumstances in deciding whether
24 the defendant had the required knowledge or intent. For
25 example, ladies and gentlemen, evidence that the defendant

1 derived some benefit from the conspiracy or had some stake in
2 the achievement of the conspiracy's objectives might tend to
3 show that the defendant had the required intent or purpose
4 that the conspiracy objective be achieved.

5 Ladies and gentlemen, Count 1 of the indictment
6 alleges that in furtherance of the conspiracy various overt
7 acts were committed. You should understand, ladies and
8 gentlemen, that to prove the crime of conspiracy under this
9 section of the United States Code the Government is not
10 required to prove that any overt acts were performed. In
11 addition, ladies and gentlemen, the Government is not required
12 to prove that any of the members of the conspiracy were
13 successful in achieving any or all of the objectives of the
14 conspiracy.

15 You may find the defendant guilty of conspiracy if
16 you find that the Government has proven beyond a reasonable
17 doubt the elements that I've just explained to you, even if
18 you find that the Government did not prove that any of the
19 conspirators actually distributed controlled substances. The
20 conspiracy is a criminal offense separate from the offense
21 that was the objective of the conspiracy. Ladies and
22 gentlemen, conspiracy is complete without the commission of
23 that offense.

24 You should understand that a conspiracy ends when
25 the objectives of the conspiracy have been achieved or when

1 all members of the conspiracy have withdrawn from it.
2 However, a conspiracy may be continue -- a continuing
3 conspiracy and if it is it lasts until some affirmative
4 showing that it has ended and that all of the members have
5 withdrawn. A conspiracy may be a continuing one if the
6 agreement includes an understanding that the conspiracy will
7 continue over time. Also, a conspiracy may have a continuing
8 purpose or objective and, therefore, may be a continuing
9 conspiracy.

10 Now, ladies and gentlemen, in this case evidence has
11 been admitted that certain persons, certain individuals who
12 are alleged -- alleged to be co-conspirators of the defendants
13 did or said certain things. You should understand that the
14 acts or statements of any member of a conspiracy are treated
15 as the acts and statements of all members of the conspiracy if
16 the acts or statements were performed or spoken during the
17 existence of the conspiracy and in furtherance of the
18 objectives of the conspiracy.

19 Therefore, ladies and gentlemen, you may consider as
20 evidence against the defendant any acts done or statements
21 made by members of the conspiracy during its existence and to
22 further the objectives of the conspiracy. You may consider
23 these acts and statements even if they were done and made in
24 defendant's absence and without the defendant's knowledge.

25 As with all of the evidence presented in this case,

1 ladies and gentlemen, it is for you to decide whether you
2 believe that evidence and how much weight you will give it,
3 that is evidence given by a member of the conspiracy when you
4 -- when the defendant was not present.

5 Ladies and gentlemen, the evidence received in this
6 case need not prove the exact amount of controlled substances
7 alleged in Count 1 of the indictment as a subject of the
8 conspiracy to distribute. The Government must prove beyond a
9 reasonable doubt, however, that each defendant conspired with
10 others to distribute a measurable amount of cocaine or cocaine
11 base.

12 Now, having said that, ladies and gentlemen, with
13 regard to the quantity of drugs as it relates to Count 1, if
14 you find any of the defendants guilty of the offense charged
15 in Count 1 you have to answer some questions that will be with
16 the verdict slip called interrogatories. Those
17 interrogatories are to determine the weight or quantities of
18 controlled substances that were the object of the conspiracy.

19 You do not answer these interrogatories until after
20 you've reached your verdict. If you find that the Government
21 has not proven any defendant guilty of any of the offenses
22 charged in Count 1 then you do not need to answer the
23 interrogatories. If you find the defendant guilty -- if you
24 find any defendant guilty then in answering these
25 interrogatories, as in deciding your verdict, you must be

1 unanimous.

2 And in order to find that the offense involved a
3 certain weight -- weight or quantity of controlled substances
4 you must be satisfied that the Government has proven the
5 weight or quantity beyond a reasonable doubt. Weight or
6 quantity means the total weight of any mixture or substance
7 which contains a detectible amount of controlled substance.

8 Ladies and gentlemen, jury interrogatory number one
9 relates to Count 1 and first asks whether you unanimously find
10 beyond a reasonable doubt that the weight or quantity of
11 cocaine which the members of the conspiracy agreed to
12 distribute was either a detectible amount of cocaine, 500
13 grams or more of a mixture or substance containing cocaine or
14 five kilograms or more of a mixture or substance containing
15 cocaine.

16 Jury interrogatory number one next asks whether you
17 unanimously find beyond a reasonable doubt that the weight or
18 quantity of cocaine base or crack cocaine which the members of
19 the conspiracy agreed to distribute was either a detectible
20 amount of cocaine base or crack cocaine, five grams or more of
21 a mixture or substance containing cocaine base or crack
22 cocaine or 50 milligrams or more of a mixture or substance
23 containing crack cocaine. Ladies and gentlemen, to answer the
24 interrogatories simply check off the appropriate amount on the
25 verdict slip.

1 Ladies and gentlemen, a conspirator is a person who
2 knowingly and intentionally agrees with one or more persons to
3 accomplish an unlawful act. You should understand that a
4 conspirator is responsible for offenses committed by his
5 fellow conspirators if he was a member of the conspiracy when
6 the offense was committed and if the offense was committed in
7 furtherance of and as a foreseeable consequence of the
8 conspiracy.

9 Now, ladies and gentlemen, Count 40, Count 49, Count
10 61, Count 62, Count 68, Count 70, Count 181 and 182 of the
11 indictment each charge more than one defendant with a crime.
12 Ladies and gentlemen, if you find that a -- beyond a
13 reasonable doubt that the defendant charged in one of those
14 counts was a member of the conspiracy at the time that one of
15 his co -- fellow conspirators committed the offense charged in
16 that count and the offense was committed in furtherance of and
17 as a foreseeable consequence of that conspiracy, then you
18 should find the defendant guilty on that count charged.

19 Those are the elements of the crime of conspiracy,
20 in this instance conspiracy to distribute controlled
21 substances. And it's for you, ladies and gentlemen, to -- to
22 review all of the evidence and testimony and determine whether
23 any of the defendants charged in Count 1 are guilty of that
24 offense or not guilty.

25 Let me talk to you now about the crime of conducting

1 a -- a continuing criminal enterprise.

2 Count 2 of the indictment charges that beginning in
3 January of 1998 until on or about August 10, 2005 defendant,
4 Alton Coles and Timothy Baukman, engaged in a continuing
5 criminal enterprise in that they committed a violation of
6 certain narcotics laws as part of a continuing series of such
7 violations. And that further this series of violations was
8 done in -- in some type of agreement with at least five other
9 persons who were managed or supervised or organized by the
10 defendants. And that from this continuing series of narcotics
11 violations defendants received substantial income. That is
12 the nature of the crime of conducting a continuing criminal
13 enterprise.

14 To find the defendant guilty of engaging in a
15 continuing criminal enterprise, ladies and gentlemen, you must
16 find that the Government has proven beyond a reasonable doubt
17 the following elements beyond a reasonable doubt. There are
18 five elements.

19 First, that the defendant committed felony
20 violations of Federal narcotics laws as charged in -- in this
21 case, Count 1, Count 38, Count 40 through 43, Count 45 through
22 56, 61, 62 and Count 1-8 -- 176 of the indictment. So the
23 first element is that the defendant committed felony
24 violations of the narcotics laws as charged in those counts of
25 the indictment.

1 Second, that such violations were part of a
2 continuing series of related violations of the Federal
3 narcotics laws.

4 Third, that the defendant engaged in this continuing
5 series of violations in concert or together with at least five
6 or more other persons.

7 Fourth, that the defendant occupied the position of
8 an organizer, supervisor or manager with respect to these five
9 or more persons.

10 And, fifth, that the defendant obtained substantial
11 income or resources from the continuing series of violations.

12 Ladies and gentlemen, the phrase felony violations
13 of the Federal narcotics laws as used in these instructions
14 means the commission of any act specifically prohibited by
15 certain sections of the United States Code for which defendant
16 could be imprisoned for more than one year.

17 Conspiracy to distribute cocaine or cocaine base,
18 distribution of cocaine or cocaine base, possession with
19 intent to distribute cocaine or cocaine base, using a
20 telephone facility to facilitate a drug trafficking crime,
21 maintaining a property for drug trafficking and investing drug
22 income in an interstate enterprise are felony violations of
23 the narcotics law.

24 Ladies and gentlemen, the phrase continuing series
25 of violations means proof of at least three violations of the

1 Federal narcotics laws and also requires a finding that those
2 violations were connected together as a series of related or
3 ongoing activities as distinguished from isolated or
4 disconnected acts. In addition, you must unanimously agree
5 about which three or more violations the defendant committed.

6 You should understand that the phrase in concert
7 with five or more other persons means some type of agreement
8 or joint action, whether direct or indirect, with at least
9 five other persons who were involved in the continuing series
10 of narcotics violations. Ladies and gentlemen, the phrase in
11 concert with five or more other persons does not require proof
12 from the Government that the five or more other persons
13 actually had contact with each other or knew each other or
14 committed each violation together or operated together
15 continuously at the same time.

16 The Government is not required to prove that the
17 defendant managed, supervised or organized these five or more
18 persons at the same time. The Government must prove beyond a
19 reasonable doubt, however, that the defendant and at least
20 five or more other persons were part of an agreement or joint
21 action to commit the continuing series of violations of the
22 Federal narcotics laws as alleged in the indictment.

23 Ladies and gentlemen, you should understand that the
24 term "organizer" and the terms "supervisory position" and
25 "position of management" are given their ordinary, usual

1 meaning. These words imply the exercise of power or authority
2 by a person who occupies some position of management or
3 supervision. This person need not be the sole or only
4 organizer, supervisor or manager of the activities of the
5 persons in question.

6 Finally, the Government must prove that the
7 defendant obtained substantial income or resources from the
8 continuing series of violations, meaning that the defendant's
9 income from the violations in money or other property must
10 have been significant in size or amount as distinguished from
11 relatively insubstantial, insignificant or trivial in amount.
12 Substantial income or resources, ladies and gentlemen, may
13 include money and other things of value, such as controlled
14 substances which are actually received by the defendant.

15 So, ladies and gentlemen, those are the elements of
16 the crime of conducting a continuing criminal enterprise. The
17 Government must prove the elements of that crime, the five
18 elements by evidence beyond a reasonable doubt.

19 Let's talk about Count 40 of the indictment which
20 charges defendant, Alton Coles, with distributing a mixture or
21 substance containing controlled substances, specifically that
22 on June 28, 2005 Alton Coles distributed a mixture or
23 substance -- or substance containing a controlled substance.

24 The statute says, ladies and gentlemen, that it's
25 unlawful for any purpose to knowingly or intentionally

1 manufacture, distribute or dispense or possess with the intent
2 to manufacture, distribute or dispense a controlled substance.
3 In order to find the defendant guilty of this offense the
4 Government must establish the following three elements beyond
5 a reasonable doubt:

6 First, that the defendant distributed a mixture or
7 substance containing the controlled substance.

8 Second, that the defendant distributed the
9 controlled substance knowingly or intentionally.

10 And, third, that the controlled substance was
11 cocaine.

12 You should understand, ladies and gentlemen, that
13 the term -- term "distribute", as used in this charge, means
14 to deliver or transfer possession or control of a controlled
15 substance from one person to another. Distribution includes
16 the sale of a controlled substance by one person to another,
17 but it does not require a sale. Distribution also includes a
18 transfer without any financial compensation, such as a gift or
19 a trade.

20 Ladies and gentlemen, as I'm sure you all know as a
21 matter of law, cocaine is a controlled substance and it is a
22 prohibited drug. However, it's solely for you to decide
23 whether the Government has established beyond a reasonable
24 doubt that the defendant distributed a mixture or substance
25 containing cocaine.

1 Now, I use the words knowingly or intentionally in
2 giving you the elements of that crime. Let me tell you what
3 those terms mean and you will hear this again. To act
4 knowingly, as used in the -- the instruction, means that the
5 defendant was conscious and aware that he was engaged in the
6 act charged and knew of the surrounding facts and
7 circumstances that make out the offense. Knowingly does not
8 require that the defendant knew the acts charged or the
9 surrounding facts amounted to a crime.

10 To act intentionally, ladies and gentlemen, as used
11 in this instruction, means to deliberately act not by
12 accident. Intentionally does not require that the defendant
13 intended to violate the law. The phrase -- the phrase
14 knowingly or intentionally, as used with this offense,
15 requires that the Government prove beyond a reasonable doubt
16 that the defendant knew that what he distributed was a
17 controlled substance. In addition, the Government must also
18 prove beyond a reasonable doubt that the controlled substance
19 was, in fact, cocaine.

20 However, as long as you find that the Government
21 proved beyond a reasonable doubt that the defendant knew what
22 he distributed was a controlled substance you need not find
23 the defendant knew that the controlled substance was cocaine.

24 In determining whether a defendant acted knowingly
25 or intentionally, ladies and gentlemen, you may consider

1 evidence about what the defendant said, what the defendant did
2 or failed to do, how the defendant acted and all other facts
3 and circumstances shown by the evidence that may prove that
4 the defendant -- what was in the defendant's mind at the time
5 of the offense.

6 Ladies and gentlemen, the evidence received in this
7 case need not prove the exact amount of the controlled
8 substance alleged in Count 40 of the indictment as distributed
9 by the defendant. The Government need only prove that it was
10 a measurable amount of a controlled substance that was
11 knowingly and intentionally distributed by the defendant.

12 Those are the elements of the crime of distributing
13 a controlled substance.

14 Let's talk about possessing a controlled substance
15 with the intent to distribute it.

16 Count 62 of the indictment charges the defendant,
17 Coles, and the defendant, Baukman, with possessing a -- a
18 mixture or substance containing a controlled substance,
19 specifically cocaine, with the intent to distribute that
20 substance on August 10, 2005. The statute says that it's
21 unlawful for any person to knowingly or intentionally possess,
22 with the intent to distribute, a controlled substance.

23 Now, in order to find the defendant guilty of
24 possession with intent to distribute a controlled substance
25 you must find that the Government has established the

1 following four elements beyond a reasonable doubt:

2 First, that the defendant possessed a mixture or
3 substance containing a controlled substance.

4 Second, that the defendant possessed the controlled
5 substance knowingly or intentionally.

6 Third, that the defendant intended to distribute the
7 controlled substance.

8 And, fourth, that the controlled substance was
9 cocaine.

10 Ladies and gentlemen, to possess a controlled
11 substance means to have it within a person's control. The
12 Government doesn't have to prove that the defendant physically
13 held or controlled the substance, that is that he had actual
14 possession of it. If you find that the defendant either had
15 actual possession of the controlled substance or had the power
16 and intention -- the power and intention to exercise control
17 over it, even though it was not in his physical possession,
18 that is that the defendant had the ability to take actual
19 possession of the substance when he wanted to do so, you may
20 find that the Government has established possession. You
21 should understand, ladies and gentlemen, that possession may
22 be momentary or fleeting. Proof of ownership of the
23 controlled substance is not required.

24 You should also understand, ladies and gentlemen,
25 that the law recognizes that possession may be sole or it may

1 be joint. If one person alone possesses a controlled
2 substance that's sole possession. However, more than one
3 person may have the power and intention to exercise control
4 over a substance, this is called joint possession.

5 If you find that the defendant had such power and
6 intention then he possessed the controlled substance even if
7 he possessed it jointly with another person. You should
8 understand however, ladies and gentlemen, that mere proximity
9 to the controlled substance or mere presence on the property
10 where it's located or mere association with a person who does
11 control the controlled substance or the property is not enough
12 to support a finding of possession.

13 I haven't seen your eyes glaze over so we'll keep
14 going.

15 Ladies and gentlemen, in order to find a defendant
16 guilty of possession of a controlled substance with intent to
17 distribute, as charged in Count 62 of the indictment, you must
18 find that the Government proved beyond a reasonable doubt that
19 they intended to distribute a mixture or substance containing
20 the controlled substance. And to find that they had the
21 intent to distribute you must find that they had in mind or
22 planned in some way to deliver or transfer possession or
23 control of the controlled substance to someone else.

24 In determining whether a defendant had the intent to
25 distribute may -- you may consider all of the facts and

1 circumstances shown by the evidence, including the words and
2 actions of defendants. In determining a defendant's intent to
3 distribute a controlled substance you may also consider, among
4 other things, the quantity of the substance, the purity of the
5 controlled substance, the manner in which the controlled
6 substance is packaged and the presence or absence of weapons,
7 large amounts of cash or equipment used in processing
8 controlled substances for sale. All of those things you may
9 consider in determining whether possessed -- someone possessed
10 a controlled substance with the intent to distribute it.

11 Ladies and gentlemen, I told you that the crime of
12 possession with intent to distribute requires knowing and
13 intentional possession and I have given you that instruction
14 just a few minutes ago so I won't repeat it again at this
15 point.

16 Ladies and gentlemen, I told you before that as a
17 matter of law cocaine is a controlled substance, but it's for
18 you to decide whether the defendant possessed the controlled
19 substance with the intent to distribute it. And, again, the
20 Government does not have to prove the exact amount of the
21 controlled substance alleged in Count 62 of the indictment,
22 all they have to prove is that there was a measurable amount.

23 Those are the elements of the crime of possession
24 with intent to distribute a controlled substance.

25 Knowing or intentional use of a communications

1 facility in facilitating a drug trafficking crime. Count 38,
2 41 through 43, 45 through 48, 50 through 56 of the indictment
3 charge the defendant, Alton Coles, with knowing or intentional
4 use of a communications facility in facilitating drug
5 trafficking -- a drug trafficking crime. Defendant, Monique
6 Pullins, is charged with this crime in Count 46 through 48 of
7 the indictment. And defendant, James Morris, is charged with
8 this crime in Counts 52 through 55 of the indictment.

9 Ladies and gentlemen, the United States Code makes
10 it a Federal crime for anyone to use a communications facility
11 in committing or facilitating the commission of a drug --
12 felony drug offense. The statute says that it shall be
13 unlawful for any person knowingly or intentionally to use any
14 communications facility in committing or causing or
15 facilitating the commission of any act or acts constituting a
16 felony under any provision of this title or Title III.

17 It also says that each separate use of a
18 communication facility shall be a separate offense under this
19 subsection. For purposes of this subsection the term
20 "communication facility" means any and all public and private
21 instrumentalities used or useful in the transmission of
22 writing, signs, signals, pictures or sounds or all kinds and
23 includes mail, telephone, wire, radio and all other means of
24 communication. That is a statutory provision.

25 Now, in order to find the defendant guilty of

1 knowingly or intentionally using a communication facility in
2 facilitating a drug trafficking crime the Government must
3 establish beyond a reasonable doubt the following two
4 elements:

5 First, that the defendant knowingly or intentionally
6 used a communication facility, in this instance a phone.

7 Second, that the defendant used the communication
8 facility to facilitate the commission of a drug felony, namely
9 the conspiracy charged in Count 1 of the indictment.

10 Now, ladies and gentlemen, the first element of
11 using a communication facility to facilitate a drug
12 trafficking crime is that the defendant used a communication
13 facility to facilitate the drug trafficking crime knowingly or
14 intentionally. The term "knowingly" means that the defendant
15 was conscious and aware of his or her actions, realized what
16 he or she was doing or what was happening around him or her
17 and did not act because of ignorance, mistake or accident.
18 The term "intentionally" means that the defendant performed
19 the act deliberately.

20 To facilitate the commission of a crime, as used in
21 this instruction, means merely to use the communication
22 facility in a way that makes it easier or less difficult or
23 aides or assists in the commission of the crime. The
24 Government does not have to prove, however, that the other
25 crime, the facilitated -- the facilitated offense, was

1 successfully carried out or completed.

2 So, ladies and gentlemen, those are the elements of
3 the crime of using a communication facility -- facility to
4 facilitate a drug trafficking crime and those are the counts
5 which charge the offense and the defendants who are charged.

6 Let's talk about the crime of managing and
7 controlling a storage facility. Count 49 of the indictment
8 charges defendant, Alton Coles and Monique Pullins, with
9 knowingly managing and controlling and knowingly aiding and
10 abetting the management and control of the apartment located
11 at 1416 Clearview Street, Apartment F520 as a lessee. And
12 knowingly and intentionally making available for use this
13 apartment for the purpose of unlawfully storing and
14 distributing a controlled substance, that substance being
15 cocaine.

16 Count 61 of the indictment charges defendant, Coles
17 and Timothy Baukman, with knowingly managing and controlling
18 and knowingly aiding and abetting the management and control
19 of the apartment located at 339 East Essex Avenue in Lansdale,
20 Pennsylvania as lessees and occupants. And knowingly and
21 intentionally making available for use this apartment for the
22 purpose of unlawfully storing and distributing controlled
23 substances, cocaine and crack cocaine.

24 Defendant, James Morris and Thais Thompson, are
25 charged in Count 67 with possession of a firearm in

1 furtherance of a drug trafficking crime. As part of that
2 count they are charged with managing and controlling a house
3 for the purpose of unlawfully storing and distributing a
4 controlled substance.

5 Ladies and gentlemen, the statute says that it shall
6 be unlawful to manage or control any place, whether
7 permanently or temporarily, either as an owner, lessee, agent,
8 employee, occupant or mortgagee and knowingly and
9 intentionally rent, lease, profit from or make available for
10 use, with or without compensation, the place for the purpose
11 of unlawfully manufacturing, storing, distributing or using a
12 controlled substance.

13 In order to find the defendant guilty of managing
14 and controlling a place used by others as drug involved
15 premises, ladies and gentlemen, you must find that the
16 Government has established beyond a reasonable doubt the
17 following three elements.

18 First, that the defendant knowingly and
19 intentionally made -- well, wait a minute -- first, that the
20 defendant managed and controlled the premises identified in
21 the indictment as a lessee or an occupant.

22 Second, that the defendant knowingly and
23 intentionally made available for use -- for use, with or
24 without compensation, that premises.

25 And, third, that the defendant did so with the

1 purpose of unlawfully storing or distributing a controlled
2 substance.

3 Ladies and gentlemen, the Government must prove that
4 the defendants knowingly and intentionally made the premises
5 available for use for unlawful drug activity. The term
6 knowingly, as used in this instruction, means that the
7 defendant was conscious and aware of his or her actions,
8 realized what he or she was doing or what was happening around
9 him or her and did not act because of ignorance, mistake or
10 accident. The term intentionally means that the defendant
11 performed the act deliberately and purposefully.

12 The third element which the Government must prove
13 beyond a reasonable doubt is that the occupants used the place
14 for the purpose of manufacturing, storing, distributing or
15 using controlled substances.

16 You should understand that a defendant manages and
17 controls a location for the purpose of unlawfully storing or
18 distributing cocaine or crack cocaine if a significant purpose
19 of the location is the storage or distribution of the
20 controlled substance. Storage or distribution need not be the
21 sole or primary purpose for which the place is used.

22 Now, ladies and gentlemen, the offense of knowingly
23 managing and controlling and knowingly aiding and abetting the
24 management and control of an apartment or house as a drug
25 storage facility, as charged in the indictment, requires proof

1 that the defendant acted knowingly. If you find that a
2 defendant acted in good faith that would be a complete defense
3 to this charge because good faith on the part of a defendant
4 would be inconsistent with him or her acting knowingly.

5 You should understand that a person acts in good
6 faith when he or she has an honestly held belief, opinion or
7 understanding that the acts in question were not unlawful,
8 even though the belief, opinion or understanding turns out to
9 be inaccurate or incorrect. Thus, ladies and gentlemen, in
10 this case if a defendant made an honest mistake or had an
11 honest misunderstanding about whether another defendant --
12 defendant's actions were unlawful he or she did not act
13 knowingly.

14 You should understand that a defendant does not have
15 the burden of proving good faith. Good faith is a defense
16 because it's inconsistent with the requirement of the offense
17 charged, that the defendant acted knowingly.

18 As I told you, it is the Government's burden to
19 prove beyond a reasonable doubt each element of the offense,
20 including the mental state element. In deciding whether the
21 Government proved that the defendant acted knowingly or
22 instead whether the defendant acted in good faith, you should
23 consider all of the evidence presented in the case that may
24 bear on the defendant's state of mind.

25 If you find that the -- from the evidence that a

1 defendant acted in good faith, as I've defined that term for
2 you, or if you find that any other person that the Government
3 has not -- if you find for any other reason that the
4 Government has not proved beyond a reasonable doubt that the
5 defendant acted knowingly, you must find the defendant not
6 guilty of the offense of managing or controlling a storage
7 facility.

8 With regard to this crime, ladies and gentlemen, to
9 find the defendant guilty of knowingly managing and
10 controlling, knowingly aiding and abetting the management and
11 control of an apartment or house you must find, as I said,
12 that the Government proved beyond a reasonable doubt that the
13 defendant knew that the apartment house was made available for
14 use for the purpose of unlawfully storing or distributing the
15 substance.

16 When, as in this case, knowledge of a particular
17 fact or circumstance is an essential part of the offense
18 charged the Government must prove that the defendant knew that
19 fact or circumstance. If the -- if the evidence proves beyond
20 a reasonable doubt that the defendant closed his eyes --
21 closed his or her eyes to what would have otherwise been
22 obvious to her, then the Government has established that
23 knowledge. In other words, ladies and gentlemen, willful
24 blindness is not a defense. No one can avoid responsibility
25 for a crime by deliberately ignoring what's obvious.

1 So, ladies and gentlemen, you may find that a
2 defendant knew that a location was being used for unlawful
3 drug activity based upon the evidence which proves that he or
4 she was aware of a high probability of this fact and he or she
5 was consciously and deliberately -- he or she consciously and
6 deliberately tried to avoid learning about the fact.

7 You may not find that the defendant knew that the
8 apartment was used for unlawful drug activity if you find that
9 the defendant actually believed that the fact did not exist.
10 Also, you may not find the defendant knew that the drug
11 activity at the location was going on if you find only that
12 the defendant should have known the fact or that a reasonable
13 person would have known of a high probability of the fact.

14 It's not enough that the defendant may have been
15 stupid or foolish or may have acted out of inadvertence or
16 accident. You must find that the defendant act -- was
17 actually aware of a high probability of the use of the
18 apartment for drug activity, deliberately avoided learning
19 about it and did not actually believe that that fact did
20 exist.

21 Ladies and gentlemen, those are the elements of the
22 crime of managing or using an -- the apartment or house for
23 drug activity, managing and controlling a storage facility.
24 If the Government has established those elements beyond a
25 reasonable doubt then you should find the defendant guilty of

1 that crime. If the Government has not established those
2 elements beyond a reasonable doubt then you must find the
3 defendant not guilty of that crime.

4 A few minutes ago I indicated to you that your eyes
5 had not glazed over yet. I think you -- we've reached that
6 point so we're going to recess at this time for about ten
7 minutes, we'll let you go out, relax. When you come back I
8 will attempt to finish these instructions before we close for
9 the day.

10 (Recess taken, 3:27 p.m. to 3:48 p.m.)

11 THE COURT: Okay. Ladies and gentlemen, have a
12 seat.

13 Ladies and gentlemen, I had planned on forging
14 forward and giving you the rest of the instructions with
15 regard to the law. However, Mr. Finney advised me that I may
16 have a mutiny on my hands if I push this matter much further.

17 The fact is I've talked to counsel about the
18 situation at this point. We have quite a bit to cover to give
19 you the rest of the instructions. As you could -- can expect
20 you knew what the charges are and you can anticipate that it's
21 going to take a significant period of time to -- to get
22 through that.

23 What I'm going to do -- what I've decided to do is
24 to recess and there's two reasons for that. I -- I would
25 normally just go ahead and get as much done as we could, but

1 the weather outside is not good and some of you have distances
2 to travel.

3 So counsel have all agreed that it makes sense to
4 recess at this point, to bring you back on Monday morning to
5 finish the charge on Monday morning. And then you will have
6 the balance of the day to begin your deliberations and I think
7 that makes sense under all the circumstances.

8 So we are going to recess at this point. I want to
9 caution you and it's -- and it's particularly important at
10 this point. You have heard all of the evidence and testimony
11 in this case, you've heard a little more than half of the
12 charge in this matter. It would be absolutely inappropriate
13 for you to talk to anybody about this case at all at this
14 juncture.

15 Now, I've cautioned you every time you've left that
16 jury box not to talk, but I'm telling you now it is a -- it is
17 an instruction that I want you to follow without question.
18 Don't talk to anybody about this case, don't let anyone talk
19 to you about it, don't do any independent investigation.

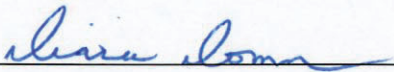
20 Take the matter as it's presented here and Monday we
21 will give you the balance of the instructions and you will
22 have this case to deliberate and you will have as much time as
23 you need to reach a fair decision in this matter.

24 With that we will recess. We'll see you on Monday.
25 Drive carefully on the way home.

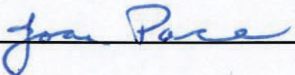
(Requested portion concluded at 3:49 p.m.)

C E R T I F I C A T I O N

We, Diana Doman and Joan Pace, court approved transcribers, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.



DIANA DOMAN



April 21, 2008

JOAN PACE

DIANA DOMAN TRANSCRIBING